

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

DETERMINATION

CALVIN M. WESTCOTT,

a Justice of the Hancock Town Court,
Delaware County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission

Terence P. O'Leary for Respondent

The respondent, Calvin M. Westcott, a Justice of the Hancock Town Court,
Delaware County, was served with a Formal Written Complaint dated December 12,
2002, containing one charge.

On January 7, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be removed and waiving further submissions and oral argument.

On January 30, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a Justice of the Hancock Town Court since November 1, 1984.
2. On or about September 30, 2002, respondent was indicted for knowingly engaging in sexual relations between January 31, 2001, and March 27, 2002, with a mentally retarded woman who had been entrusted to his care.
3. On November 12, 2002, respondent was convicted of Endangering The Welfare Of A Mentally Retarded Person, in violation of Section 260.25 of the Penal Law, a crime that involves moral turpitude.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(A) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained.

The New York State Constitution provides that upon conviction of a crime involving moral turpitude, a judge shall be removed from office. NY Const Art 6 §22(f); Jud Law §44, subd 8(b). By law, respondent's conviction of Endangering The Welfare

Of A Mentally Retarded Person (Penal Law §260.25), a crime that involved moral turpitude, warrants his removal.

Respondent's conduct, as established in the criminal matter resulting in his conviction¹, amply demonstrates his lack of fitness for judicial office. Such behavior is intolerable in one who holds a position of public trust and irreparably damages respondent's ability to serve as a judge. *See Matter of Stiggins*, 2001 Ann Rep 123 (Comm'n on Jud Conduct, Aug 18, 2000) (judge was convicted of Penal Law §260.25 and §120.00 [Assault Third Degree] in connection with her conduct towards a patient in a nursing facility).

This determination is rendered pursuant to Judiciary Law §47 in view of respondent's resignation from the bench.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

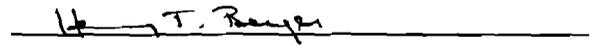
Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Ms. Moore, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

¹ Penal Law Section 260.25 states: "A person is guilty of endangering the welfare of an incompetent or physically disabled person when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself or herself because of physical disability, mental disease or defect." The crime is a Class A misdemeanor.

CERTIFICATION

It is certified that the foregoing is the determination of the State
Commission on Judicial Conduct.

Dated: February 3, 2003

A handwritten signature in black ink, appearing to read "Henry T. Berger", is written over a solid horizontal line.

Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct